



HARRISONBURG-ROCKINGHAM
REGIONAL SEWER AUTHORITY

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Submitted Online (www.regulations.gov)

EPA Water Docket ID No. EPA-R03-OW-2010-0736

Environmental Protection Agency

Mailcode: 28221T

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Washington, DC 20460

Submitted by Email (vabaytmdl@dc.virginia.gov)

Department of Conservation and Recreation

Commonwealth of Virginia

203 Governor Street

Richmond, VA 23219

Re: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Comments on the Draft Total Maximum Daily Load ("TMDL") for the Chesapeake Bay; and Virginia Chesapeake Bay Watershed Implementation Plan ("WIP")

To Whom It May Concern:

Thank you for the opportunity to comment on EPA's Draft TMDL for the Chesapeake Bay and Virginia's WIP. The Harrisonburg-Rockingham Regional Sewer Authority (HRRSA) owns and operates the North River Wastewater Treatment Facility (WWTF), a regional municipal wastewater treatment plant serving the City of Harrisonburg, Rockingham County and the Towns of Bridgewater, Dayton and Mt. Crawford, Virginia. The North River WWTF, which has been operating a biological nutrient removal process since 2001, produces an exceptional, highly treated effluent within the Chesapeake Bay watershed in accordance with a Virginia Pollutant Discharge Elimination System (VPDES) permit.

HRRSA remains committed to doing our fair share to restore the Bay. Our sustaining commitment to the Bay clean-up effort is exemplified by the North River WWTF's multi-million dollar enhanced nutrient removal (ENR) and expansion project which will be completed by the end of this year. With a total project budget of over \$90 million, HRRSA has expended considerable resources in ensuring a successful and timely completion of this extensive, three-year project. In addition to increased debt service on approximately \$64 million in new loans, the ENR project has also resulted in significantly higher operating and maintenance expenses resulting from dramatically increased energy requirements and additional chemical usage and solids production from operation of the new enhanced nutrient removal process. These additional costs have been borne by our member localities through increased rates to their customers.

HRRSA has significant concerns with EPA's Draft TMDL and strongly objects to the disproportionate share of EPA's threatened "backstop" actions that are unfairly directed at already highly regulated and controlled wastewater treatment facilities. EPA currently proposes to cut Virginia's stringent nutrient wasteload allocations ("WLAs") currently set forth in Virginia's EPA-approved Water Quality Management Planning Regulation, 9VAC25-720, and Chesapeake Bay Watershed General Permit Regulation, 9VAC25-820 (collectively, the "Virginia Regulations"). EPA also threatens to cut WWTP allocations further to so-called "full backstop" levels, which would decrease the concentration basis further (3 mg/L TN and 0.1 mg/L TP at design flow) and possibly even the flow basis to past

flow levels (2007 to 2009 average flow rather than design flow). Such actions and threats by EPA on the wastewater sector are completely unjustified and would do little to advance the Bay cleanup, which necessarily depends on major nonpoint source reductions since roughly 80 percent of the nutrient load is attributable to nonpoint sources.

HRRSA understands that EPA is considering these punitive “backstop” actions under a new EPA guidance letter on “reasonable assurance” and that EPA’s initial position is that Virginia has given inadequate assurance that nonpoint sources (e.g., agricultural sources) will reduce their nutrient loads according to plan. HRRSA questions the legality of EPA’s reasonable assurance guidance given the fact that this guidance has not been promulgated through rulemaking. More importantly, HRRSA strongly objects to EPA’s complete disregard for the primacy of Virginia to make decisions and to structure its WIP based on established nutrient control strategies and regulations well understood and supported by Virginia stakeholders.

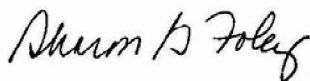
As you may know, Virginia has achieved significant point source reductions in both Total Nitrogen and Total Phosphorus through its Watershed General Permit which requires compliance with stringent waste load allocations by December 31, 2010. In addition, the Watershed General Permit led to the formation of the Virginia Nutrient Credit Exchange Association, which provides for a comprehensive and accountable program to facilitate point-to-point nutrient trading among its participants of which HRRSA is a member. Accordingly, based on Virginia’s proven track record in successfully developing and implementing these highly effective programs, HRRSA does not understand why EPA has so readily predicted failure of and summarily rejected the Virginia WIP on grounds of “inadequate reasonable assurance”. Virginia should be given the opportunity to demonstrate that its WIP can meet the Bay TMDL two-year milestones without imposition of EPA’s “backstop” actions.

HRRSA believes that the Draft Bay TMDL is fundamentally and materially flawed. These deficiencies are thoroughly documented in the comments of the Virginia Association of Municipal Wastewater Agencies, Inc. (“VAMWA”). We request that EPA fully consider and address all of VAMWA’s comments, which we generally support and hereby incorporate by reference as if fully set forth herein.

In closing, HRRSA observes that among the Draft Bay TMDL’s many serious deficiencies is the lack of acknowledgement or appreciation for the major financial commitments that have already been made by HRRSA and many other local governments based on Virginia’s adoption and EPA’s approval of the Virginia Regulations in 2005 and 2007. The decision by HRRSA and its member localities to enter into additional long term debt was made based on the state’s pledge of ‘regulatory stability’ concerning the wasteload allocations set forth in the Watershed General Permit and the expectation that such regulatory stability would provide a foundation to responsibly plan for economic development and growth by our member localities. EPA’s threatened override of the Virginia Regulations and Virginia WIP through the Draft TMDL and its elements that relate to our WLAs would destroy this foundation.

Thank you again for the opportunity to comment. HRRSA would like to reiterate its enduring commitment to clean water and the Bay restoration efforts. Please contact me at (540) 434-1053 or sfoley@hrrsa.org if you need additional information.

Sincerely,



Sharon G. Foley, P.E.,
Executive Director

c: Mr. Alan Pollock, VA DEQ (alan.pollock@deq.virginia.gov)
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